

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

OTIS MAYS,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

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Case No. CIV-24-17-G

ORDER

Plaintiff Otis Mays, a federal prisoner appearing pro se, initiated this civil action on January 8, 2024. In accordance with 28 U.S.C. § 636(b)(1), the matter was referred to Magistrate Judge Shon T. Erwin for preliminary review.

On January 23, 2024, Judge Erwin issued a Report and Recommendation (Doc. No. 5) recommending that this action be dismissed on screening for failure to state a claim of a constitutional violation upon which relief can be granted.

Plaintiff has now filed two submissions, which the Court liberally construes as Objections to the Report and Recommendation. *See* Doc. Nos. 6, 8. Pursuant to controlling authority, the Court reviews de novo the portions of the R. & R. to which specific objections have been made. *See United States v. 2121 E. 30th St.*, 73 F.3d 1057, 1060 (10th Cir. 1996); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

In his Objections, Plaintiff appears to argue that he is attempting to seek relief not only for constitutional violations but also pursuant to the Federal Tort Claims Act. Plaintiff

has supplied a proposed amended pleading and other supporting documents. *See* Doc. Nos. 6, 8.

Having considered Plaintiff's contentions, the Court finds that Plaintiff should be permitted an opportunity to amend his pleading using the proper form(s). Plaintiff is advised that any such attempt to continue with this litigation will be subject to the procedural and filing-fee requirements of the Federal and Local Civil Rules, as well as any applicable screening requirement of 28 U.S.C. § 1915A.

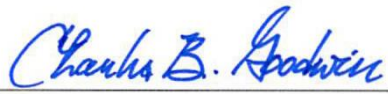
CONCLUSION

Accordingly, the reasoning of the Report and Recommendation (Doc. No. 5) is ADOPTED. The Court declines to dismiss this matter at this time.

Plaintiff's Motion for Leave to Appeal *In Forma Pauperis* (Doc. No. 7) is DENIED, as there is no appeal currently pending.

This matter is re-referred to Judge Erwin in accordance with the initial order of referral.

IT IS SO ORDERED this 3rd day of April, 2024.



CHARLES B. GOODWIN
United States District Judge